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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.J., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

C.J.,

Defendant and Appellant.

E054911

(Super.Ct.No. RIJ113371)

OPINION

APPEAL from the Superior Court of Riverside County. Matthew C. Perantoni,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and
Appellant.

Pamela J. Walls, County Counsel, Carole A. Nunes Fong, Deputy County
Counsel, for Plaintiff and Respondent.

No appearance for Minor.

J.J. (minor) (born July 2010) came to the attention of plaintiff and respondent Riverside County Department of Public Social Services (the department) on July 25, 2010, after defendant and appellant C.J. (mother) had given birth to minor and informed a medical social worker that all of her previous children had been removed due to mother's substance abuse. The juvenile court detained minor on July 28, 2010. On November 17, 2010, the juvenile court sustained the department's juvenile dependency petition, found jurisdiction over minor, and formally removed minor from mother's custody, but awarded mother six months of reunification services despite the department's recommendation to the contrary.

On June 27, 2011, the juvenile court terminated mother's reunification services and set the matter for a Welfare and Institutions Code section 366.26 hearing.^{1,2} On October 25, 2011, the juvenile court terminated mother's parental rights. Mother appeals, contending the juvenile court erred in its determination the beneficial parental relationship exception did not apply to bar termination of mother's parental rights. We affirm the judgment.

¹ Mother filed a petition for extraordinary writ from the juvenile court's termination of her reunification services pursuant to California Rules of Court, rule 8.452(a), in case No. E053931; we denied mother's petition on September 28, 2011. On the court's own motion, we incorporated that record with the instant case.

² All further statutory references are to the Welfare and Institutions Code unless otherwise indicated

FACTUAL AND PROCEDURAL HISTORY

On July 27, 2010, the department filed a petition pursuant to section 300 alleging mother had an extensive history of child neglect, substance abuse, and unresolved mental health issues. The department had previously offered mother reunification services as to her four other children, but she did not benefit from services. All four children were permanently removed from her custody. The department filed amendments to the petition on August 18, 2010, September 24, 2010, and October 21, 2010, as the social worker's investigation proceeded, so that the petition would include appropriate allegations about alleged fathers.

When interviewed at the hospital on July 25, 2010, mother reported she had used methamphetamine regularly for the first four months of pregnancy, but had been sober since her fifth month of pregnancy when she entered treatment. She also used marijuana until January 11, 2010. Mother further acknowledged she was schizophrenic and went off her medications when she found out she was pregnant. Since that time, she had not been treated by a psychiatrist, but said her symptoms had decreased.

When minor was born, mother was living in a residential treatment facility; she was doing very well, and had completed a parenting education course. A program counselor told the social worker mother would have adequate support from fellow residents and staff to care for minor under a family maintenance plan. Pending further investigation, the social worker originally recommended minor remain in mother's care so long as she stayed in the residential treatment program and submitted to a psychological evaluation. However, by July 28, 2010, the recommendation had changed

to removal and minor was immediately placed in a foster home. At the detention hearing on July 28, 2010, the juvenile court found there was a prima facie case for removal.

Reunification services and visitation once per week were ordered for mother.

Mother complied with her substance abuse treatment program, graduating on September 24, 2010. She was then scheduled to move to a nearby sober living home. Despite Mother's progress, the social worker recommended no further services pursuant to subdivisions (b)(10) and (b)(11) of section 361.5, because she failed to reunify with three other children and was not offered any reunification services as to a fourth child. In addition, the social worker reasoned mother had a long history of methamphetamine abuse and untreated schizophrenia. She had only been sober for a brief period of about six months while in a treatment environment. As a result, her ability to maintain her sobriety outside a treatment program was untested.

On August 31, 2010, the court continued the jurisdictional hearing and ordered the alleged father to submit to paternity testing. On October 4, 2010, a genetic test report confirmed the alleged father was minor's biological father, so the court continued the jurisdictional hearing once again.³ In an addendum report filed November 4, 2010, the social worker indicated mother was no longer living in a sober living environment and had made a "poor choice" by moving in with father. Father had an extensive criminal history that included violent offenses, as well as a history of domestic violence against

³ Father is not a party to this proceeding, so facts pertaining to him have been included only to the extent they are relevant to mother's appeal.

mother and substance abuse with mother. Once again, the social worker recommended no further services to mother.

At the jurisdiction and disposition hearing held November 17, 2010, the juvenile court found mother made minimal progress in alleviating the causes necessitating placement. The court found true the allegations mother had an extensive history with child protective services, lost custody of four other children, failed to benefit from prior reunification services, and was not offered services as to one other child. The court also found mother had an extensive history of substance abuse and had abused methamphetamine during the first four months of her pregnancy. However, the court found not true allegations mother had unresolved, untreated mental health issues and continued to experience hallucinations. This finding appears to be based on a letter in the record from mother's treating psychiatrist, which said mother's schizophrenia symptoms appeared to be under control without medication while she was living a sober lifestyle; mother would reportedly be evaluated monthly.

Based on the best interests of minor, reunification services were ordered for mother, but not for father. Mother was ordered to participate in a not yet established case plan. As part of the case plan, mother would be required to participate in programs for victims of domestic violence, parenting education, and substance abuse treatment and testing. She was also required to participate in counseling, be assessed for whether she required treatment with psychotropic medication, and follow a treatment plan for her mental health issues. Supervised visitation was ordered three times per week.

In a status review report dated May 5, 2011, the social worker noted mother had moved at least five times during the reporting period to different sober living homes; she was currently living in a motel. Mother was asked to leave one sober living home because of bizarre behavior. Mother was only in partial compliance with her case plan: she had been discharged from individual counseling for non-attendance; had been referred for counseling with another counselor, but had attended only one session since; and did not attend outpatient drug care to which she had been referred.⁴ The social worker questioned whether mother had benefitted from the services in which she had participated.⁵ On the other hand, mother was testing negative for substance abuse and was consistently visiting with minor twice a week for two hours.⁶ In the opinion of the social worker, minor could not be returned to mother because she was unable to secure safe, stable housing for herself or minor and had not sufficiently benefitted from services. Based on these factors, and the age of minor, the social worker recommended no further services for mother.

⁴ Mother's last documented participation in a 12-step program occurred on March 28, 2011.

⁵ Mother had completed a parenting program, but could not demonstrate how it benefitted her. Likewise, mother had completed a domestic violence program, but continued in a relationship with father, who had been violent toward her in the past.

⁶ There is no explanation as to why visits only occurred twice a week instead of the three times weekly as ordered by the court.

On June 27, 2011, a year after minor had been detained, the juvenile court held the six-month review hearing. The juvenile court heard testimony from mother and the social worker. The court found mother was not a credible witness and concluded she had not regularly participated in or made substantive progress on the case plan. In addition, the court stated that based on the testimony, mother had not sufficiently dealt with her psychiatric and anger issues. The court terminated reunification services and set a permanency hearing pursuant to section 366.26. Mother's visits with minor were reduced to once per month.

In a selection and implementation hearing report filed September 27, 2011, the department recommended the juvenile court terminate mother's parental rights. The department had placed minor with her maternal aunt and uncle, the prospective adoptive parents, on January 18, 2011, over eight months earlier. The prospective adoptive parents had already adopted minor's half-brother on April 7, 2011. Minor developed a healthy bond with the prospective adoptive parents, who were providing for her physical, medical, and emotional needs; the prospective adoptive parents wanted to ensure minor had a stable and permanent home. Mother consistently visited with minor for an hour once a month; the visits went well. Mother was observed to interact with minor by reading and talking to her.

In an addendum report filed October 14, 2011, the social worker reiterated her recommendation that mother's parental rights be terminated. She noted the prospective adoptive parents were caring, gentle, and bonded to minor. They had already raised several children, both biological and adopted.

At the section 366.26 hearing on October 25, 2011, mother testified she had moved again. She noted she attends to minor's needs during visitation. The juvenile court terminated mother's parental rights finding that such an order would not be detrimental to minor.

DISCUSSION

Mother contends the court erred in failing to find that termination of mother's parental rights would be detrimental to minor; in other words, that mother did not come within the so-called "beneficial parent-child relationship" exception. We hold the court acted within its discretion.

"The 'parent-child relationship' exception in section 366.26, subdivision (c)(1)(B) provides that a dependency court should not terminate parental rights if '[t]he court finds a *compelling* reason for determining that termination would be *detrimental* to the child[because]: [¶] (i) [t]he parents have maintained regular visitation and contact with the child and the child would *benefit* from continuing the relationship.'" (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469 (*Scott B.*).

"Because adoption is more secure and permanent than a legal guardianship or long-term foster care, adoption is the Legislature's first choice for a permanent plan for a dependent minor child who has not been returned to the custody of his or her parents and who is found by the dependency court to be adoptable. [Citations.] To avoid termination of parental rights and adoption, a parent must demonstrate that one or more of the section 366.26, subdivision (c)(1)(A) or (B) exceptions to termination of parental rights applies to his or her child. The parent has the burden of proof on the issue. [Citation.] Because

a parent's claim to such an exception is evaluated in light of the Legislature's preference for adoption, it is only in exceptional circumstances that a court will choose a permanent plan other than adoption. [Citation.]" (*Scott B.*, *supra*, 188 Cal.App.4th at p. 469.)

“The factors to be considered when looking for whether a relationship is important and beneficial are: (1) the age of the child, (2) the portion of the child's life spent in the parent's custody, (3) the positive or negative effect of interaction between the parent and the child, and (4) the child's particular needs.” [Citation.] ‘Interaction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences. [Citation.] The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent.’ [Citation.] Evidence of ‘frequent and loving contact’ is not sufficient to establish the existence of a beneficial parental relationship. [Citation.]” (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315-1316 (*Bailey J.*).

The determination as to whether a beneficial parent relationship exists is reviewed for substantial evidence. (*Bailey J.*, *supra*, 189 Cal.App. at p. 1314; see also *Scott B.*, *supra*, 188 Cal.App.4th at p. 469.) The determination of detriment “is, instead, a ‘quintessentially’ discretionary decision, which calls for the juvenile court to determine the *importance* of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of

adoption. [Citation.] Because this component of the juvenile court's decision is discretionary, the abuse of discretion standard of review applies." (*Bailey J.*, at p. 1314; see also *Scott B.*, at p. 469.)

Here, sufficient evidence supported the juvenile court's inherent determination that a beneficial parental relationship did not exist. Minor was only one and a half years old. Minor had been in mother's custody, at most, only three days while still in the hospital. Mother's entire relationship with minor was established initially through her twice weekly supervised visits and later, in minor's more impressionable period, through once monthly supervised visits. Thus, mother had never occupied a parental, or even caretaker, position with respect to minor. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350; *Bailey J.*, *supra*, 189 Cal.App.4th at p. 1316.) Although no evidence established the visits were detrimental to minor, mother failed to adduce sufficient evidence to establish that termination of her rights would prove detrimental. Rather, at best, she proved they were enjoyable to minor.

The prospective adoptive parents, on the other hand, occupied the position of primary caregivers to minor for nearly 10 months. In the prospective adoptive parents' custody, minor was able to establish a relationship with her sibling. The social worker observed minor was well bonded with the prospective adoptive parents, and that they provided for all her needs. The minor's need for permanence and stability support the juvenile court's order terminating mother's parental rights.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

HOLLENHORST
Acting P. J.

McKINSTER
J.